IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 138 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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SAIYED AMURUDDIN ALIMUDDIN - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR LR PATHAN for Appellant(s) : 1,MR MOHD.HANIF SHAIKH for Appellant(s) : 1,
MR. R.C.KODEKAR, APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 04/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. By instant Appeal under Section 34 of the Prevention of Terrorism Act, 2002 (“POTA” for short) the appellant / accused seeks to challenge the joint order dated 28.12.2004 recorded below application exhs. 13, 17, 28, 26, 27 and 28 of POTA Case No. 1 of 2004 by the learned Special Judge POTA, by which the

application exh. 18, filed by the appellant under Section 227 of the Code of Criminal Procedure read with Sections 26 and 33 of POTA, to discharge the appellant from the prosecution and alternatively to transfer the case to regular Court, has been rejected.

2. At the time of final hearing of this appeal, Mr. L.R.Pathan, learned advocate of the appellant, upon instructions received from the appellant, who is at present in Sabarmati Central Jail, Ahmedabad, seeks leave to withdraw the appeal in view of the fact that the trial of POTA Case No. 1 of 2004 has already been commenced and the evidence of most of the witnesses have been recorded.

3. Mr. R.C.Kodekar, learned APP for the respondent – State of Gujarat has no objection if leave to withdraw the appeal is granted.

4. Hence, leave to withdraw the appeal is granted. The Appeal stands disposed of as it is withdrawn.

5. Needless to mention that the order which is impugned under this Appeal is an interlocutory order which has been passed while deciding the application filed by the appellant seeking discharge from the prosecution. Therefore, the learned trial Judge, POTA before whom the case is led for

trial and who is seized of the trial, shall decide the matter on the basis of the evidence adduced before him, strictly in accordance with law, without being influenced by the observations made by the learned Judge, POTA while deciding the application seeking discharge from the prosecution.

(A.M.Kapadia,J)

(K.A.Puj,J)

Jayanti*